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## Questions remain over GenX consent order

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Posted at 5:21 PM

Updated at 5:45 PM

Federal permit prevents Chemours from directly discharging the chemical, but doesn't seem to cover its release as a byproduct

WILMINGTON -- Terms of a federal consent order allowing Chemours to make GenX requires the company to keep 99 percent of any emissions from that production from escaping -- but exempts the same chemical from any such restriction when produced as a byproduct in a separate process.

That apparent contradiction left a number of people puzzled during a meeting last week between company representatives and state and local officials.

"It's the same substance based on your answers," New Hanover County Chairman Woody White told Chemours representatives. "That does not make sense. That's hard to explain."

The emissions restriction and the exemption are part of a consent order drawn up in 2009 by the U.S. Environmental Protection Agency (EPA). In that same document, the EPA noted that it "has concerns that these PMN (premanufacture notice) substances will persist in the environment, could bioaccumulate, and be toxic ("PBT") to people, wild mammals, and birds." PBT **refers** to substances that persist in the environment, accumulate in the bodies of animals and are toxic.

Since early last week, the StarNews has asked both the EPA and the N.C. Department of Environmental Quality about the consent order and the exception. Neither provided answers to those questions.

**Contaminating byproduct**

GenX is manufactured by Chemours at its plant at the Fayetteville Works site, about 100 miles up the Cape Fear River from Wilmington.

Research teams discovered GenX in the river in 2012 and in the river and water system of the Cape Fear Public Utility Authority (CFPUA) in 2013-14. The utility, which serves most of New Hanover County, cannot filter the substance from the water before it is sent to taps. Though other water systems have not been tested, others downstream from the plant -- including some serving residents in Brunswick and Pender counties -- likely have been contaminated as well.

During the meeting in Wilmington on Thursday, Chemours representatives told local and state officials the GenX in the river is not from the company's operation that manufactures the substance. Instead, the contaminating GenX is a byproduct of a separate operation and has been discharging into the Cape Fear since that operation began in 1980.

"In fact, we capture 100 percent of GenX (from production), so the likely question on your minds would be, 'If you capture 100 percent of GenX, how's GenX getting in the river?' " said Kathy O'Keefe, Chemours' product sustainability director. "We're manufacturing GenX, and it's governed through this consent order. (We are in) 100 percent compliance 100 percent of the time.

"At a different production area of the site we make polyvinyl ether. These are the emissions that are in the Cape Fear River, from this unregulated byproduct.

"There's no requirement to capture emissions of that chemical," O'Keefe told officials, "but we put abatement technology in place and we did that in November of 2013.

"There's an exemption for byproducts -- in consent order," she said.

### **'No commercial intent'**

The exception is for a chemical "produced, without separate commercial intent, only as a 'byproduct,' " according to a copy of the consent order obtained by the investigative news website **The Intercept**.

“It’s made in the byproduct of the process,” O’Keefe said Thursday. “There’s no commercial intent there, so it doesn’t get regulated until there’s commercial intent.”

The exception is part of what the EPA labels its “Boilerplates for Orders under section 5 of TSCA” (Toxic Substances Control Act). It was not known how long the exception has been part of the boilerplate or whether it is included in all or most consent orders.

In the case of Chemours at the Fayetteville Works, GenX is produced as an unintended byproduct. But it also is produced commercially -- though in a separate process specifically intended to make GenX.

So does the exception apply?

### **No answers from Chemours, regulators**

Chemours and DuPont, which created Chemours in 2015 from businesses including the GenX manufacture, have operated the process that results in GenX as a byproduct since 1980.

If the exemption does apply, that means that after almost three decades of discharge as a byproduct, GenX was approved by the EPA for commercial production with stipulations restricting emissions during that manufacture -- but with a loophole exempting the existing byproduct discharge from any abatement requirement.

The StarNews asked Chemours officials last week whether the company was aware that GenX was a byproduct of another process as it negotiated the consent order with the EPA and for a more detailed explanation of why it believes the exception applies in this case. No answers had been received by late Monday.

The StarNews also has sought answers to specific questions about the consent order and the byproduct exemption from the EPA since June 12, but has received no response to those questions.

As for the state, Bridget Munger, a DEQ spokeswoman, said last week: “This is a question for the EPA as their agency issued the consent order. EPA staff would be most familiar with the intent of that provision of the document.”

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